

APPEAL FROM ORDER NO.307/84

Date of Decision:22-1-1996

For approval and Signature:

THE HON'BLE MR. JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

---

Mr. P.V.Hathi, Advocate for the Appellant.

Mr.P.M.Thakkar, Advocate for the respondents.

---

CORAM;K.R.VYAS,J.

January ,22, 1996

ORAL JUDGMENT :

The present appeal from order is filed by the appellant-original defendant No.1, who died during the pendency of the appeal , challenging the order of injunction dated 5th May 1984 passed below application, Ex.6, in Special Civil Suit No. 76/83 by the learned Civil Judge (S.D.) Rajkot.

Respondent No.1 filed the said civil suit in the Court of learned Civil Judge (S.D.) Rajkot against the appellant and respondents Nos. 2 to 9 for recovery of Rs.2,28,000/- alleged to have been misappropriated . It was the case of the plaintiff that the plaintiff was a private limited company and that defendant No.1 was serving in the plaintiff company; that defendants Nos.2 and 3 are daughter and son and defendant No.6 is a friend of the appellant and that while discharging his duties with the plaintiff-company, different demand drafts sent by different persons were given to the appellant for depositing in the State Bank of Saurashtra and that on seeing the statement of account of the Bank, it was found that those drafts were actually not

deposited in the account of the plaintiff and that defendants Nos.1,4,5 and 6 had opened an account with the Rajkot Nagrik Co-operative Bank in the Prabhat Packing Store and all these drafts were deposited in that account and were encashed. Therefore, a criminal complaint was also lodged against the appellant. The plaintiff, therefore, filed the suit for recovery of in all Rs.2,28,000/-.

On 8th July, 1993, respondent No.1 (original plaintiff) filed an application, Ex.6, wherein he obtained an order directing the Canara Bank not to allow the appellant to withdraw the amount from the Bank or to borrow loan on the strength of the fixed deposit receipts pending the hearing of the notice. The appellant by his written statement denied the allegations made in the suit and opposed the application, Ex.6. According to the appellant, the Fixed Deposit Receipt stood in the name of the wife of the appellant Hemlataben was not the subject matter of the suit and, in any case, she was otherwise not made a party to the proceedings and therefore the application is required to be rejected. The learned trial Judge, after hearing the parties, on 5th May 1984 allowed the application and ex parte injunction granted earlier was made absolute till the disposal of the suit. Hence the present appeal from order.

Alongwith the appeal, the appellant also filed an application being Civil Application No. 4147/84 to suspend the operation of the injunction order passed by the trial court pending the hearing and final disposal of the appeal. On 17-12-1984 this Court (Coram:A.P.Ravani,J - as he then was) passed the following order:

"Heard the parties. The applicant will be at liberty to renew the FDR and receive the interest from time to time which might have accrued so far and which may accrue in future. It will, not be open to the applicant to encash the FDR and withdraw the principal amount. The admission of A.O. and grant of interim relief should not be treated as a ground for adjourning the suit. on the contrary, the trial court is directed to proceed further with the suit as expeditiously as possible. Rule made absolute to the aforesaid extent."

Having heard the learned Advocates, I am of the opinion that no useful purpose will be served in entering into the controversy as to whether respondent No.1 is entitled to obtain an injunction as granted by the trial court and whether the amount in question by way of FDR belongs to the wife of the appellant as these questions can be decided in the suit itself. The fact that the injunction order has remained in force since 5th May 1984 till date, and

that the appellant is permitted to receive the interest on the FDR from time to time and particularly in view of the fact that the trial court was directed to proceed further with the suit as expeditiously as possible, and by this time it is reasonable to infer that the trial must have been over, if the following directions are given, that would certainly meet with the ends of justice:

1. The interim order dated 17-12-1984 passed by this Court in Civil Application No. 4147/84 shall operate till the hearing and final disposal of the suit in question.

2. If the suit, for any reason, is not disposed of by this time, the same shall be disposed of as early as possible and, in any case, not later than 21st June, 1996.

3. It will be open to the heirs of original defendant No.1 Lalitkumar Modi to file necessary application for withdrawal of the amount lying in the fixed deposit account. As and when such an application is made, the same will be considered by the trial Court on merits and in accordance with law.

In the result, this appeal from order is disposed of in terms of the aforesaid directions 1 to 3 above. This Appeal From Order is disposed of accordingly with no order as to costs.

---

MR.JUSTICE K.R.VYAS

